

What is a Living Will?

(Advance Directive
for Health Care)

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Dear Middlesex County Resident:

As the Surrogate of Middlesex County, it is my pleasure to welcome you to the Office of the Surrogate and to the various statutory and assigned functions that we perform for the citizens of Middlesex County.



Although our primary responsibility is the processing of estates, we are also engaged in matters relating to adoptions, guardianships, the management of minor's trust funds along with a number of other services.

Our Speaking Program, which is one of my special interests, enables us to share information about the office and its services and to assist people through lectures, seminars, workshops and informational literature.

This pamphlet, "WHAT IS A LIVING WILL? (ADVANCE DIRECTIVE)" provides you with information regarding the New Jersey Advance Directive For Health Care, commonly called a living will. The NJ Advance Directive enables you to specify in advance your health care preferences and to appoint a health care representative to make decisions for you in case of future physical or mental impairment.

If there is any way that I can be of assistance to you in matters related to the work of the Surrogate's Office or if you have any questions related to the information in this pamphlet, please phone me at 732-745-3055.

Extending every good wish, I remain,
Sincerely yours,

A handwritten signature in black ink that reads "Kevin J. Hoagland". The signature is written in a cursive, flowing style.

Kevin J. Hoagland
Surrogate
Middlesex County

Introduction

An Advance Directive, commonly known as a Living Will, permits an individual to provide a general statement of his wishes regarding health care in the event the individual has lost the ability to express his desires.

An Advance Directive permits you to write down your intentions regarding medical procedures in the event you can no longer express yourself.

The purpose of an Advance Directive is to permit an individual to preclude medical treatment which prolongs death rather than improves recovery or quality of life.

It is important to note the limitations of an advance directive. The document does not permit a physician to take pro-active steps to terminate life, but rather permits withholding of treatment.

What is an Advance Directive (Living Will)?

In New Jersey, an Advance Directive (commonly referred to as a Living Will) may include both an Instruction Directive and a Proxy Directive. An Instruction Directive is a writing which provides instructions and direction regarding the person's wishes for health care in the event that person subsequently lacks decision-making capacity. A Proxy Directive is a writing which designates a health care representative in the event the maker subsequently lacks decision-making capacity.

Is an Advance Directive legal?

Yes. New Jersey Statute 26:2H-54 (1992) specifically authorizes an individual to execute an Advance Directive, and to appoint another as proxy for health care decisions. Advance Directives are recognized in all 50 states, information regarding the law in a particular state can be accessed through that state or through the Federal Patient Self Determination Act, 42 USC 1395 c(a)-1 et. seq.

Can anyone prepare an Advance Directive?

Any competent adult (18 years or older) may execute an Advance Directive.

Must I hire an Attorney to prepare an Advance Directive?

No, but you have that option.

How is an Advance Directive prepared?

It is important for the Advance Directive to be prepared properly. If it is not, it may be given no effect, thereby thwarting your intentions. The New Jersey Statute sets out specific requirements for executing an Advance Directive. The Advance Directive shall be signed and dated by, or at the direction of, the maker in the presence of two subscribing adult witnesses, or a notary public, attorney at law, or other person authorized to administer oaths, who shall attest that the person is of sound mind and free of duress and undue influence. A designated health care representative shall not act as a witness to the execution of an Advance Directive. An Advance Directive may be supplemented by a video or audio tape recording. A female may include information as to what effect the Advance Directive shall have if she is pregnant.

Must I consult with my doctor before preparing an Advance Directive?

No, but you have that option also. The Advance Directive refers to specific medical treatments, or the application of specific medical devices. If you have questions about those treatments or devices, you should consult your physician.

What is the purpose of an Advance Directive?

An Advance Directive recognizes a distinction between medical treatment which assists recovery and medical treatment which merely prolongs the process of dying. An Advance Directive speaks for you when you cannot. It tells your medical care providers that you do not want them to prolong the process of dying.

What are some limitations of an Advance Directive?

There are several. First, the degree to which they are accepted varies from state to state. The national trend is toward increased acceptance.

Pursuant to an Advance Directive, life-sustaining treatment may be removed only when the patient is permanently unconscious, the patient's condition is terminal, or if the treatment is experimental and is likely to be ineffective or is likely merely to prolong the dying process. Life-sustaining treatment may also be withdrawn if the patient has a serious irreversible illness. Withdraw or withholding of treatment must reasonably outweigh the benefits to the patient. Imposition of treatment on an unwilling patient would have to be considered inhumane.

An Advance Directive becomes operative when given to the attending physician or to the health care institution and when the person is determined to lack capacity to make a particular health care decision. An attending physician's determination that a patient lacks decision-making capacity must be confirmed by another physician.

Most important is to understand that an Advance Directive is limited by its purpose: to avoid prolonging the death process. If an individual executes an Advance Directive prohibiting use of a ventilator, that individual's wishes will be honored if the ventilator does nothing more than prolong the process of dying. In some circumstances, an individual is placed on a ventilator with anticipation of recovery. In that case, the ventilator is not prolonging someone's death.

An Advance Directive will be affected by changes in medical technology. A procedure which, in 1980 merely prolonged death, may, in 1996, be a valuable life-saving tool.

An Advance Directive authorizes medical care providers to withhold treatment. It does not, nor cannot, authorize a medical care provider to take proactive steps to hasten your death.

What is a Medical Power of Attorney?

The Medical Power of Attorney is a document which permits you to appoint an individual to make decisions on your behalf. In New Jersey, this is known as a Proxy Directive and may be included in your Advance Directive.

Where should I keep my Advance Directive?

The Advance Directive does you no good unless it is available. Since it obviously comes into play when you have lost the ability to express yourself, it is important for individuals other than yourself to know where it is. Most hospitals will ask you if you have executed an Advance Directive prior to admission. Certainly, the individual whom you have appointed as your proxy should have access to your Advance Directive.

Other Sources of Information

Information regarding New Jersey statutes can be obtained from the New Jersey Department of Community Affairs or the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care.

Whom should I appoint as my Health Care Representative?

You should choose someone who is aware of your desires and whose judgment you trust. You should discuss your advance directive with that person and make sure he/she has a copy. It is also important to ascertain that the individual you select is willing to assume this responsibility.

How can I revoke my Advance Directive?

An Advance Directive may be revoked by notification, to the health care representative, physician, nurse or other health care professional, or other reliable witness. Such notification can be written, oral, or by any other act evidencing an intent to revoke the document. Also, subsequent proxy directives or instructive directives may be executed to revoke ones previously made.

Am I required to execute an Advance Directive?

No. The statute gives you this option. No one can force you to execute an Advance Directive. One of the requirements for proper execution of the document is that the person executing it be free of duress and undue influence.

Does the execution of an Advance Directive affect organ donations?

The right of an individual to make an anatomical gift is not restricted by the execution of an Advance Directive. An individual's right to make such a gift is controlled by the Uniform Anatomical Gift Act, which in New Jersey has been adopted at NJS 26:6-57 through 65.

HIPPA PROVISION IN MEDICAL DIRECTIVES

The Medical Decision Attorney-in-Fact named in this document is hereby designated as my "Personal Representative" as defined by 45 CFR 164.502 (g), commonly known as the HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT of 1996 (HIPAA). This individual is to have the same access to my health care and treatment information as I would have if I were able to act for myself. My Medical Decision Attorney-in-Fact and Personal Representative named herein is also authorized to take any and all legal steps necessary to ensure his or her access to information and such action shall include resorting to legal process, if necessary, to enforce my rights under the law and shall attempt to recover attorneys fees, as authorized by New Jersey law, in enforcing my rights.

NEW JERSEY ADVANCE DIRECTIVE FOR HEALTH CARE (LIVING WILL) GUIDELINES

**FOR THE COMPLETION OF YOUR LIVING WILL
DOCUMENT AS PROVIDED WITH THIS PAMPHLET**

Prior to executing a New Jersey Advance Directive for Health Care (commonly known as a Living Will) and the Durable Power of Attorney For Health Care for the Appointment of a Health Care Representative (Proxy Directive), you should consult with your physician, hospital and family, and become fully informed about your rights regarding medical treatment, the procedures and options available and all matters related to these important legal documents and their consequences.

After extensive study and a full understanding, you may complete the document by printing your name on the top line of the document in the space provided for that purpose.

Under the headings A - TERMINAL CONDITIONS, B - PERMANENTLY UNCONSCIOUS and C - INCURABLE AND IRREVERSIBLE CONDITIONS THAT ARE NOT TERMINAL, you should denote your preferences regarding treatment by marking a check or an (X) after number 1 if you wish to direct the withholding or discontinuation of medical treatment. If you wish to direct the continuation of life-sustaining treatment, you must mark a check or an (X) on the space after the number 2.

Under the heading D - EXPERIMENTAL AND/OR FUTILE TREATMENT, you may mark a check or make an (X) in the space marked 1 only if you want this form of therapy or treatment withheld or withdrawn.

The heading E - BRAIN DEATH provides you with the option of excluding your death from being declared on the basis of the irreversible cessation of the entire brain, including the brain stem.

The heading F - SPECIFIC PROCEDURES AND/OR TREATMENTS provides you with the opportunity to express your desire and wishes regarding some specific medical treatment options. Should you want a particular treatment, you should mark a check or make an (X) following the words: "I do want." Should you oppose a particular treatment or procedure, mark a check or make an (X) following the words: "I do not want."

The heading G - ORGAN DONATION provides you with the choice of donating your organs or not. Should you wish to donate your whole body to science for research or give any specific instructions regarding organ donations, you may write those directions in the box labeled specific instructions.

On the reverse side of the document under the heading **SPECIFIC INSTRUCTIONS**, there is a boxed space that enables you to write any wishes, directions and instructions that you wish to add to the document. This space enables you to craft the document to address your personal philosophy, value system, religious concerns and any other instructions.

The heading **DURABLE POWER OF ATTORNEY FOR HEALTH CARE for the APPOINTMENT of a HEALTH CARE REPRESENTATIVE (PROXY DIRECTIVE)** provides you with a legal document that enables you to appoint a primary representative and an alternate health care representative authorized to make decisions regarding your health care and treatments consistent with your wishes as expressed in the instruction directive.

Please note that you should discuss your health care wishes with your selected representatives and that they should consent to serve as your proxies.

This document can be completed by dating the section that follows the sentence: “I sign this document knowingly and after careful deliberation” this day, month and year and by signing your name and printing your address.

Two non-relative witnesses must sign their names and addresses and the document must be dated. Although New Jersey statutes do not require notarization, this form provides for this option.

When you have completed your Advance Directive, make several copies. Keep the original document in a safe but easily accessible place and tell others where you have stored it. **DO NOT KEEP YOUR ADVANCE DIRECTIVE IN A SAFE DEPOSIT BOX.** Have it readily available upon admission to a hospital or nursing facility. Give copies of your Advance Directive to the individuals you have chosen to be your Health Care Representative and Alternate Health Care Representative. You may also give copies of your Advance Directive to your doctor, your family, clergy and to anyone who might be involved with your health care.

Keep a completed ID (identification) card on your person and carry your Advance Directive with you when you travel.

NEW JERSEY ADVANCE DIRECTIVE FOR HEALTH CARE (LIVING WILL) GLOSSARY OF MEDICAL TERMS

A. LIFE SUSTAINING TREATMENT

1. CARDIOPULMONARY RESUSCITATION (CPR): CPR describes procedures that are done to restart the heart when it stops beating (“cardiac arrest”), and/or to provide artificial respiration when breathing stops (“respiratory arrest”). CPR can involve manual pressure to the chest and mouth-to-mouth breathing or pumping of air into the lungs using a rubber bag. In some instances, a tube may be inserted into the windpipe (“intubation”) for mechanical ventilation.

2. MECHANICAL VENTILATION OR RESPIRATION: A machine called a respirator or ventilator can take over breathing if the lungs cannot adequately breathe. It provides oxygen through a tube inserted into the windpipe.

3. SURGERY: A surgical procedure involves cutting into the body to treat a problem.

4. CHEMOTHERAPY: Chemotherapy is drug treatment for cancer. It is used to cure cancer or reduce the discomfort of cancer even if it does not cure it.

5. RADIATION THERAPY: Radiation therapy involves the use of high levels of radiation to shrink or destroy a tumor.

6. DIALYSIS: Dialysis requires the use of a machine that cleanses the blood when the kidneys cannot function adequately. This can be done through tubes placed into blood vessels (hemodialysis) or done through tubes into the abdomen (peritoneal dialysis).

7. TRANSFUSION: The term transfusion refers to giving of any type of blood product into a vein intravenously.

8. ARTIFICIALLY PROVIDED NUTRITION AND FLUIDS: This group of terms refers to feeding patients who are unable to swallow food and fluid. This can be done through a tube into a vein or into the stomach. The feeding tube to the stomach can be placed through the nose (nasogastric tube) or through the abdomen (gastrostomy tube).

9. ANTIBIOTICS: Antibiotics are medications used to fight infections. They can be administered by mouth, by vein, by injection into a muscle, or through a feeding tube.

B. COMFORT AND SUPPORTIVE CARE (PALLIATIVE CARE)

Comfort care is any kind of treatment that increases a person's physical or emotional comfort. Comfort care includes adequate pain control. It may also include oxygen, food and fluids by mouth, moistening of the lips, cleaning, turning, touching a person, or simply sitting with someone who is bedridden.

C. MEDICAL CONDITIONS:

1. TERMINAL CONDITION: The end stage of an irreversible fatal illness, disease or condition.

2. PERMANENT UNCONSCIOUSNESS: A medical condition that is total and irreversible in which a person cannot interact with his/her surroundings or with others in any way and in which a person does not experience pleasure or pain.

D. ADVANCE DIRECTIVE FOR HEALTH CARE/LIVING WILL:

1. INSTRUCTION DIRECTIVE: An Instruction Directive for Health Care, sometimes called a Living Will, is a written document, signed by you, in which you decide in advance the kind of care you would want if for any reason you are unable to make health care decisions for yourself.

2. PROXY DIRECTIVE: The Proxy Directive enables you to designate a health care representative. This person may be a family member, friend or other person who understands your feelings and is willing to make decisions for you about accepting, refusing or withdrawing treatment if you become unable to do so for yourself.

This list of definitions for certain medical terms may be relevant when preparing an Advance Directive for Health Care/Living Will. The definitions are intended to provide basic information only. Many of the terms are broad and complex and cannot be adequately explained in one brief passage. Also, technology and treatments change over time. If you have questions about a particular procedure, the best source of information is your doctor.

– NOTES –

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